

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Dig Safe Notice No. 487

In Re P & L Trucking, Alleged Violation of                    )  
September 17, 2007, as reported by Vermont                )  
Telephone Company, Inc.    )

Order entered: 6/30/2009

**ORDER RE: NOTICE OF PROBABLE VIOLATION**

**Background**

1. Pursuant to 30 V.S.A. § 7001, et. seq. ("Dig Safe statute"), and Vermont Public Service Board Rule 3.800, the Vermont Department of Public Service ("Department") issued a Notice of Probable Violation of Underground Utility Damage Prevention System ("NOPV") to P & L Trucking ("Respondent").<sup>1</sup>
2. Incident Date: September 17, 2007
3. Incident Location: 1842 Dean Brook Road, Chester, VT
4. Name and Address of Company that Reported the Incident to the Department: Vermont Telephone Company Inc. ("VTEL") 354 River Street, Springfield, VT
5. Date NOPV issued by Department: February 8, 2008
6. Department's Statement of Evidence Supporting the Alleged Violation: "The Department of Public Service investigated this incident and determined the following details. On 9/17/07, P&L Trucking began excavating to build a new driveway at this site. P&L Construction did not notify the one call center prior to excavating. During the course of the excavation, an unmarked Vermont Telephone distribution cable was damaged, causing a loss of service to several subscribers until repairs could be made. The cable was not marked out because no notification was made to the one call system prior to excavating. P&L Trucking notified VTEL of the damaged facility. The Department of Public Service issued [0] Notices of Probable violation (NOPV's) to P & L Trucking during the 12 months preceding this incident."<sup>2</sup>

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1. Department of Public Service Dig Safe Case # 1392.

2. NOPV at 4.

7. Statute, Rule, Regulation or Order Allegedly violated: 30 V.S.A. § 7004
8. The Department's Recommended Remedial Action(s) (Including Civil Penalties): Civil penalty in the amount of Six Hundred Dollars (\$600.00) and attendance at a Department-approved underground damage prevention seminar.
9. The Respondent has objected to the remedy recommended by the Department in the NOPV.
10. In support of the Respondent's objection to the NOPV, the Respondent stated: "To agree with the actions recommended in my mind means that this was done intentionally, which it was not . . . . The landowner for this project oversaw and directed all of the work done. I had questioned him on where the underground lines ran and how deep they were. I was assured I would not get close to them. Unfortunately, he was incorrect. I do know the requirements of Dig Safe and have abided by them in all other instances; unfortunately, for the subscribers and myself I made an error in judgment based on the perceived knowledge of someone else. I am not trying to place blame on the landowner but to explain the situation on that day."<sup>3</sup>
11. In response to the Respondent's objection, the Department stated: "The response does not raise any substantive issues or defenses relevant to a decision of liability in this matter. The Department maintains that the proposed remedial action and/or penalty is appropriate under the facts of the case."<sup>4</sup>
12. No party has requested a hearing in this matter.

### **Discussion**

The Dig Safe statute establishes a process for prevention of damage to underground utility facilities. The process begins with excavators giving advance notice to Dig Safe about the approximate location of any intended excavation activities,<sup>5</sup> and Dig Safe, in turn, notifying all utility companies authorized to serve in that location about the upcoming excavation activities.<sup>6</sup> The utilities then are required to mark the locations(s) of their underground facilities so that the

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3. Letter of Palmer H. Goodrich II, dated February 27, 2008.

4. E-mail from GC Morris sent March 10, 2008.

5. 30 V.S.A. § 7004.

6. 30 V.S.A. § 7005.

excavators may take proper precautions to avoid damaging the facilities.<sup>7</sup> Specific definitions and requirements are set forth in the Dig Safe statute as well as Public Service Board Rule 3.800, and penalties may be imposed by the Board when it finds a violation of the statute.

In this case, the Department has alleged that the Respondent violated 30 V.S.A. § 7004, which provides in relevant part:

No person or company shall engage in excavation activities, except in an emergency situation as defined by the board, without premarking the proposed area of excavation activities and giving notice as required by this section . . . before commencing excavation activities, each person required to give notice of excavation activities shall notify the system referred to in section 7002 of this title. Such notice shall set forth a reasonably accurate and readily identifiable description of the geographical location of the proposed excavation activities.

In this case, it is clear that the Respondent did not give advance notice of excavation activities as required by the Dig Safe statute. Therefore, we find that the Respondent violated 30 V.S.A. § 7004 as alleged by the Department in the NOPV.

### **Conclusion and Order**

We conclude that the remedial action proposed in the NOPV is appropriate, and should be imposed.<sup>8</sup>

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Within thirty days of the date of this Order, P & L Trucking shall pay a civil penalty in the amount of Six Hundred Dollars (\$600.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont; and

2. P & L Trucking shall attend an Underground Damage Prevention Seminar at such time and place as designated by the Vermont Department of Public Service.

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7. 30 V.S.A. § 7006.

8. See, Public Service Board Rule 3.807(G).

Dated at Montpelier, Vermont, this 30<sup>th</sup> day of June, 2009.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: June 30, 2009

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*